

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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ELECTRONICALLY FILED
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DATE FILED: 7/23/2020

LA DOLCE VITA FINE DINING COMPANY
LIMITED and LA DOLCE VITA FINE DINING
GROUP HOLDINGS LIMITED,

Petitioners,

- against -

ZHANG LAN, GRAND LAN HOLDINGS GROUP
(BVI) LIMITED, QIAO JIANG LAN DEVELOPMENT
LIMITED f/k/a SOUTH BEAUTY DEVELOPMENT
LIMITED and METRO JOY INTERNATIONAL LLC,

Respondents.

Case No. 20 Misc. 200 (ALC)

ORDER MODIFYING
ORDER OF
ATTACHMENT

WHEREAS, Petitioners petitioned the Court (ECF No. 15, the “Petition”) under New York CPLR § 7502(c) and applicable provisions of CPLR Article 62, as incorporated in Fed. R. Civ. P. 64, for an *ex parte* order of attachment as against Respondents Zhang Lan (“Zhang”), Grand Lan Holdings Group (BVI) Limited (“Grand Lan”), Qiao Jiang Lan Development Limited f/k/a South Beauty Development Limited (“Qiao Jiang”) and Metro Joy International LLC (“Metro Joy”), and in aid of two related arbitrations pending before the China International Economic and Trade Arbitration Commission in Beijing (the “Arbitrations”), in which interim arbitral awards, in the amount of \$142,463,666.28, have been rendered in Petitioners’ favor and against Zhang, Grand Lan and Qiao Jiang (the “Arbitral Respondents”); and

WHEREAS, the property that Petitioners sought to attach consists of (i) a condominium apartment, purchased in Metro Joy’s name in December 2014 and currently owned or controlled by one or more Respondents, in the Baccarat Hotel and Residences (the “Baccarat”) located at 20 West 53rd Street, Apartment 39A, New York, New York 10019 (the “Apartment”), and (ii) any

assets within the Apartment that are owned or controlled by Respondents, including but not limited to artwork, furniture, jewelry, lighting and electronics; and

WHEREAS, the Court granted the Petition by *ex parte* Order of Attachment entered on May 8, 2020 (ECF No. 30, the “Attachment Order”), thereby freezing and securing the Apartment and its contents and barring them from being sold or transferred without further order of the Court; and

WHEREAS, Petitioners have posted a \$150,000 bond, as security, as required under the Attachment Order, and served Respondents with the Attachment Order, the Petition, and all of the other papers on which the Attachment Order is based (the “Attachment Papers”) in accordance with the methods for service set forth in the Attachment Order, completing such service by May 14, 2020 (*see* ECF Nos. 31-32 (Affidavits of Service)); and

WHEREAS, on May 19, 2020, and in accordance with the Attachment Order, Petitioners timely moved under CPLR § 6211(b) for an order confirming the Attachment Order, serving Respondents with the motion, which included the Attachment Papers, in accordance with the methods for service set forth in the Attachment Order (*see* ECF Doc. Nos. 27-28); and

WHEREAS, Respondents, despite having received proper notice of this proceeding, have had no counsel appear on their behalf and filed no opposition to Petitioners’ motion to confirm the Attachment Order; and

WHEREAS, by Order dated July 13, 2020 (ECF No. 40, the “Confirmation Order”), the Court granted the motion to confirm the Attachment Order; and

WHEREAS, the Confirmation Order reaffirmed that the Apartment and any assets therein that are owned or controlled by Respondents shall not be sold or transferred, by Respondents or anyone else, without further order of the Court; and

WHEREAS, the Attachment Order contains a provision (at p. 4) by which the United States Marshal for the Southern District of New York (the “U.S. Marshal”) shall, upon being presented with the Attachment Order, levy upon the Apartment under New York CPLR § 6216 by filing with the Clerk of New York County (the “NY County Clerk”) a notice of attachment stating (i) the name and address of Petitioners’ counsel, (ii) the names of the parties to this proceeding, (iii) the amount of the arbitral awards rendered in Petitioners’ favor, and against Respondents, in the Arbitrations, (iv) the amount of the bond posted by Petitioners, and (v) a description of the property to be levied upon (i.e., the Apartment and its relevant contents) (the “Notice of Attachment”); and

WHEREAS, the U.S. Marshal, pursuant to a standing order issued by Chief Judge McMahon in March 2020 in light of the COVID-19 pandemic, has since March been prohibited until further notice from performing the service required to file the Notice of Attachment with the NY County Clerk; and

WHEREAS, (i) the NY County Clerk rejected Petitioners’ counsel’s attempts to file the Notice of Attachment directly, advising counsel that any such filing must be carried out by the U.S. Marshal or the Office of the Sheriff of the City of New York; (ii) the Sheriff’s Office declined to file the Notice of Attachment with the NY County Clerk because the Attachment Order did not direct or authorize it to do so; and (iii) the NY County Clerk has accordingly not yet recorded or indexed the Notice of Attachment; and

WHEREAS, as of the time of this Order, Petitioners have no way of having the Notice of Attachment filed with the NY County Clerk as a matter of public record so as to inform potential buyers of the Apartment that the Apartment is subject to the Attachment Order; and

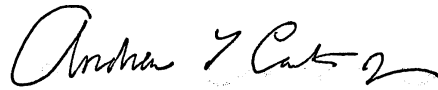
NOW, THEREFORE, it is hereby ordered as follows:

1. The Attachment Order is hereby amended as set forth in decretal paragraph 2, which modifies the second decretal paragraphs at p. 4 of the Attachment Order. All other provisions of the Attachment Order remain the same.

2. ORDERED that upon being presented with the Attachment Order, the Confirmation Order, and this Order Modifying Order of Attachment, either by Petitioners or this Court, the United States Marshal for the Southern District of New York or the Office of the Sheriff of the City of New York shall levy upon the Apartment pursuant to New York CPLR § 6216 by filing with the Clerk of New York County the Notice of Attachment stating (i) the name and address of Petitioners' counsel (Steven B. Feigenbaum, Esq., Katsky Korins LLP, 605 Third Avenue, New York, NY 10158), (ii) the names of the parties to this proceeding, (iii) the amount of the Arbitral Awards issued in favor of Petitioners against Respondents (\$142,463,666.28), (iv) the amount of the bond posted by Petitioners (\$150,000), and (v) a description of the property to be levied upon (i.e., the Apartment and its relevant contents); and it is further

SO ORDERED:

Dated: July 23, 2020
New York, NY

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written over a horizontal line.

Hon. Andrew L. Carter, Jr. United
States District Judge